

ASSN030047282022



<u>IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS, SONITPUR</u> Present : Smti. Dimpee Talukdar, AJS, JMFC, Sonitpur (18/01/2025) (Case No. PR 1694/2022)	
PROSECUTION	STATE OF ASSAM
REPRESENTED BY	MR. A. SAHANI LEARNED A.P.P.
ACCUSED	JOSEPH KANDULNA (A1) S/O- LATE JAMES KANDULNA VILL- SURIABILL PS- RANGAPARA DIST- SONITPUR, ASSAM.
REPRESENTED BY	D. BARUAH LEARNED DEFENCE COUNSEL

Date of Offence	19.08.2022
Date of FIR	20.08.2022
Date of Charge-Sheet	11.10.2022
Date of Offence Explained	18.12.2023
Date of Commencement of Evidence	19.03.2024
Date on which Judgment is reserved	N/A
Date of Judgment	18.01.2025
Date of Sentencing Order, if any	N/A

Accused Details :

Rank of the accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences Charged With	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during trial for purpose of Section 428 Cr.P.C.
A1	Joseph Kandulna	N/A	25-10-2023	304(A) IPC	Acquitted	N/A	N/A

JUDGMENT

1. The accused person A1 has stood Trial for an offence punishable ***u/S 304(A) of the IPC.***

Allegation, information and investigation:

2. The brief of the prosecution case is that on 19/08/2022 in the evening hours the nephew of the informant named Jayban Kheriya aged 12 years had gone to the playground. The accused had installed electric wires near his paddy field which was adjacent to the playground. When his nephew was playing, he came in contact of the live electric wires and died. Hence, this case.

3. On the strength of the FIR, the Rangapara P.S. case No. 112/2022 was registered. The police duly investigated the case and after completing the investigation, the I/O had submitted the charge-sheet against the accused A1 u/S 304(A) of the IPC.

Trial :

4. Accordingly, cognizance of the charge-sheeted offence was taken as per Section 190(1)(b) of the Criminal Procedure Code and process was issued to the accused to appear before this Court. On appearance, copies of relevant documents were furnished to the accused A1 in compliance with the provision of Section 207 Cr.P.C. and substances of

accusations u/S 304(A) of the IPC were read over and explained to the said accused person to which he pleaded not guilty and claimed to be tried.

5. During trial the prosecution examined six witnesses including the I.O. Thereafter, prosecution evidence was closed. The statement of defence of the accused A1 was recorded as per the provision under section 313 of the Cr.P.C and I have duly considered the same while writing the judgment. The defence denied to adduce any evidence.

6. I have heard both the learned counsels for the prosecution as well as the defence on the merit of the case and have thoroughly gone through the evidence on record. The defence counsel had also filed his written argument which I have duly taken into consideration.

Point for determination:

7. Basing on the materials available on record and in order to find out whether the prosecution has been able to establish the guilt of the accused A1 beyond reasonable doubt in the case in hand, the following point has been taken up for determination:

Whether the accused A1 had caused the death of victim Jaiban Kheria by

negligently installing electric wire at his paddy field, which did not amount to culpable homicide, and thereby committed an offence punishable u/S 304(A) of the IPC?

DECISION AND REASONS THEREOF

8. PW-1, Esral Hemron, the informant stated in his evidence that he was the informant of this case. He knew the accused. The incident took place on 19/08/2022 in the evening hours. At that time his nephew Jayban Kheriya aged 12 years had gone to the playground. The accused had installed electric wires near his paddy field which was adjacent to the playground. When his nephew was playing, he came in contact of the live electric wires and got electrocuted. They took him to Rangapara PHC immediately but Doctor declared him dead. He lodged the FIR regarding the incident on the next day. Exhibit P1/PW.1 was the FIR and Exhibit P1(1)/PW.1 was his signature therein.

In his cross-examination, PW-1 stated that the FIR was written with the help of the police and it was written as per his dictation. He had seen the accused installing electric wire on his paddy field. The electricity was supplied from the house of the accused. The PW-1 denied the suggestion put to him by the defence.

9. PW-2, Nahum Surin deposed in his evidence that he knew the informant as well as the accused. The incident took place on 19.08.2022 in the evening hours at around 4 pm. One Jayban Kheriya aged 12 years who was the nephew of the informant was electrocuted on that day when he had gone to the playground. The accused had installed electric wires near his paddy field. When the victim came in contact of the live electric wires he got electrocuted. He died at the spot. He knew that the accused had installed electric wire in his paddy.

In his cross examination, P.W-2 deposed that there are other people's paddy field near the accused. He had not seen the accused installing the electric wire but he had knowledge about the same. He reached the spot after the victim was electrocuted. The villagers did not permit the accused to install the electric wire. The PW-2 denied the suggestions put to him by the defence.

10. PW-3, Elan Hemron deposed in his evidence that he knew the informant as well the accused. The incident took place on 19.08.2022 in the evening hours at around 3-4 pm. Their nephew Jayban Kheriya aged 12 years were playing with his friends in the playground. The accused had installed electric wires near his paddy field to prevent

elephant attack. When the victim came in contact of the live electric wires he got electrocuted. The accused forgot to disconnect the electricity from the wire. He was secretary of Suriyabil Gaon Samiti at that time. On many occasions they reminded the accused not to install electric wire in the paddy as the same was dangerous but he did not listen. The victim got electrocuted and died at the spot for the fault of the accused.

In his cross examination, PW-3 deposed that he was at home at the time of the incident. He had not seen how the victim got electrocuted. The electricity was installed by one Dalen Surin. The land of Dalen Surin and the accused are adjacent. Dalen Surin had installed the wire for preventing the elephant. He had not seen the accused installing the electric wire. The PW-3 denied the suggestions put to him by the defence.

11. PW-4, Dr. Samir Sarmah deposed in his evidence that on 19/08/2022 he was posted as Medical and Health Officer No. 1 at Kanaklata Civil Hospital. In connection to GDE no. 427/2022, he had given the post-mortem report of Jaigan Kharia aged 9 yrs. The body was escorted by UBC/816 Bijit Saikia. On examination, he found burn injuries on the hands and feet of the victim. The entry wound was found at the hands and exit wound was found

at the feet of the victim. Every other body part of the victim was normal. In his opinion the cause of death was due to electric shock sustained by the victim. Exbt- P2/ PW4 is the Post-mortem report and Exbt-P2(1)/PW-4 was his signature therein.

In his cross examination, PW-4 deposed that he could say that the wound was sustained due to electric shock as there was entry wound and exit wound. He deposed that the post-mortem report did not contain police case number but had GD entry no.

12. PW-5, Danial Surin deposed in his evidence that the accused had fished using electricity and he had also enfenced his paddy field by using electric wires. He deposed that one boy came in contact with the electric wire and was electrocuted. He deposed that he did not know about the electric wires installed by the accused.

During his cross-examination, the PW-5 deposed that he did not see the boy being electrocuted. He denied the suggestion put to him by the defence counsel.

13. PW-6, Debendra Sarmah, the IO deposed in his evidence that on 20.08.2022, he was posted at Rangapara PS as attached officer. Israil Hemron lodged an FIR on that day which was registered as Rangapara PS Case no. 112/2022 u/s 304 (A) of IPC.

He was endorsed to investigate the case. He inspected the place of occurrence and drew the sketch map of the place of occurrence. Exhibit-P3/PW-6 was the sketch map and Exhibit-P3(1)/PW-6 was his signature therein. He recorded the statement of the witnesses and collected the postmortem of the victim. After finding sufficient evidence against the accused Joseph Kandulna, he submitted charge sheet. Exhibit-P4/PW-6 was the charge sheet and Exhibit-P4(1)/PW-6 was his signature therein. Before filing of the FIR regarding the incident, the GD entry no. 427 dated 19.08.2022 was made receiving information regarding the incident. The extract copy of the said GD entry has been submitted with the charge sheet.

In his cross-examination, PW-6 deposed that the PW-1 did not state before him that the victim had gone to the play ground. The PW-1 did not state anything regarding play ground. The PW-1 did not state before him that they had taken the victim to Rangapara PHC. The PW-2 stated before him that the accused had installed electric wires in the paddy field. PW-2 did not state before him that one Jayban Kheria aged 12 years who was the nephew of the informant was electrocuted when he went to the playground. The PW-3 did not state before him

that the victim lost his life due to the fault of the accused. He went to the place of occurrence on 20.08.2022. He did not seize any electric wire from the place of occurrence. In Exhibit P3 it is shown that the house of Amrush Bhengra is adjacent to the place of occurrence and he did not record his statement. The PW-6 denied the suggestions put to him by the defence.

Judicial determination:

14. I have considered the evidence on record in its entirety. Let me now reproduce the necessary ingredients of the alleged offence which is needed to be proved by the prosecution beyond all reasonable doubt in order to bring home the offence u/S 304(A) of the IPC. Thus, in order to convict a person **u/S 304(A)** IPC, the following ingredient is to be proved by the prosecution beyond all reasonable doubt:

- There must be death of the person in question,
- The accused must have caused such death, and
- That such act of the accused was rash or negligent and it did not amount to culpable homicide.

15. Coming to the case at hand, the prosecution has examined 6 witnesses in total, the depositions of whom I have reproduced herein above for ready reference. Plain perusal of the evidence on record shows that there was an incident where the victim Jayban Kheriya lost his life and the prosecution case is that the accused A1 has caused such death by negligently installing electric wires in his paddy field.

16. The learned defence counsel in his written argument has relied upon the judgment of **Jacob Mathew vs. State of Punjab and anr.** reported in **(2005) 6 SCC1** wherein the Honourable Supreme Court had explained that for a negligent act to constitute an offence under Section 304A IPC the same should be gross negligence and an element of *mens rea* must be shown to exist. The Honourable Court had further explained that the degree of negligence which is punishable u/S 304A IPC should be of a higher degree. The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. In the light of the said judgment I have analysed the materials available on record to arrive at a just decision.

17. Now coming back to the evidence available on record it can be seen that except the PW-1 none had been able to stick to the statement that the accused had installed live electric wire in his paddy field. It can be seen from the evidence that there are other people's paddy field was also to the close vicinity where the incident of electrocution took place. The PW-3 in his cross-examination had clearly mentioned that the electric wires were installed by one Dalen Surin and the land of said Dalen Surin is adjacent to that of the accused. The PW-3 is an important witness for the prosecution, him being the Secretary of the village committee during that point of time. But the statement of the PW-3 has made the prosecution case a doubtful one since his statement has created a reasonable doubt in the mind of this Court regarding the place of occurrence and installation of live electric wires. The evidence on record has not been able to inspire the confidence of the Court regarding the installation of electric wires in the paddy field of the accused where the victim allegedly lost his life.

18. The learned defence counsel argued that the witnesses examined by the prosecution are all interested who are in good relation with the informant as well as the family members of the victim. He argued that there are different

statements between the prosecution witnesses regarding the place of occurrence and none of the prosecution witnesses saw that the victim was electrocuted due to the negligent act of the accused. The counsel further argued that there is material contradiction in the prosecution case specially as regard who had installed the electric wires.

19. Now going by the evidence on record it cannot be denied that the victim died due to electrocution as the medical officer has confirmed the same. However, it cannot be said to have been established by the prosecution that such death was caused by any rash or negligent act of the accused. The PW-1 is the only prosecution witness who stated that he had seen the accused installing electric wire in his paddy field but the rest of the prosecution witnesses could not corroborate and support the prosecution case to the extent which is needed to establish the guilt of the accused beyond reasonable doubt since the prosecution could not establish due to whose fault the victim lost his life.

20. It is the burden of the prosecution to establish through cogent and unimpeachable evidence that the accused person committed the alleged offence, failing which the accused A1 will be proved innocent. Thus, from the deliberate discussion

made in the preceding paragraphs it has become apparent that there is no unimpeachable and credible evidence to prove the prosecution case beyond all reasonable doubt and that the accused person had caused the death to the victim by doing any rash or negligent acts. That being said, the point for determination as averred in paragraph no.7 is decided in negative.

ORDER

21. On the strength of discussion made above, I am of the considered opinion that in the facts and circumstances of the instant case, the evidence on record is not at all sufficient to prove the guilt of the accused A1 beyond all reasonable doubt, as such the accused A1 is acquitted of the charges ***u/S 304(A) of the IPC*** and set at liberty forthwith.

His bail-bond is extended for a period of 6 (six) months as per the provision *u/S 437 A* of the Cr.P.C.

The material exhibits (if any) shall be disposed in due course of time.

Given under my hand and seal of this Court on this **18th day of January, 2025** at Sonitpur, Tezpur, Assam.

Dimpee Talukdar
Judicial Magistrate 1st Class, Tezpur.

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE
PW-1	ESRAL HEMRON	INFORMANT
PW-2	NAHUM SURIN	LISTED WITNESS
PW-3	ELAN HEMRON	LISTED WITNESS
PW-4	DR. SAMIR SARMAH	LISTED WITNESS
PW-5	DANIAL SURIN	LISTED WITNESS
PW-6	DEBENDRA SARMAH	LISTED WITNESS

B. Defence Witnesses : NIL.

C. Court Witnesses : NIL.

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr. No.	Exhibit Number	Description
01	EXHIBIT-P1/PW-1	FIR
02	EXHIBIT-P1(1)/PW-1	SIGNATURE OF THE PW-1
03	EXHIBIT-P2/PW-4	POST MORTEM REPORT
04	EXHIBIT-P2(1)/PW-4	SIGNATURE OF THE PW-4
05	EXHIBIT-P3/PW-6	SKETCH MAP
06	EXHIBIT-P3(1)/PW-6	SIGNATURE OF THE PW-6
07	EXHIBIT-P4/PW-6	CHARGE SHEET
08	EXHIBIT-P4(1)/PW-6	SIGNATURE OF THE PW-6

B. Defence Exhibits : NIL.

C. Court Exhibits : NIL.

D. Material Objects : NIL.

Dimpee Talukdar
Judicial Magistrate 1st Class, Tezpur.